

§ 2.2-2666.1. Council created; composition; compensation and expenses; meetings; chairman's executive summary.

A. The Virginia Military Advisory Council (the Council) is hereby created as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government, to maintain a cooperative and constructive relationship between the Commonwealth and the leadership of the several Armed Forces of the United States and the military commanders of such Armed Forces stationed in the Commonwealth, and to encourage regular communication on continued military facility viability, the exploration of privatization opportunities and issues affecting preparedness, public safety and security.

B. The Council shall be composed of 25 members as follows: the Lieutenant Governor, the Attorney General, the Adjutant General, the Chairman of the House Committee on Militia, Police and Public Safety and the Chairman of the Senate Committee on General Laws, or their designees; four members, one of whom shall be a representative of the Virginia State **Defense Force**, to be appointed by and serve at the pleasure of the Governor; and 16 members, including representatives of major military commands and installations located in the Commonwealth or in jurisdictions adjacent thereto, who shall be appointed by the Governor after consideration of the persons nominated by the Secretaries of the Armed Forces of the United States and who shall serve at the pleasure of the Governor. However, any legislative member who is appointed by the Governor shall serve a term coincident with his term of office. The provisions of § 49-1 shall not apply to federal civilian officials and military personnel appointed to the Council.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12, and nonlegislative members shall receive such compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Military Affairs.

D. The Council shall elect a chairman from among its membership. The vice-chairman of the Council shall be the Assistant to the Governor for Commonwealth Preparedness. The meetings of the Council shall be held at the call of the chairman or whenever the majority of members so request. A majority of the members shall constitute a quorum.

E. The chairman of the Council shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Council no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

(2002, c. 676; 2003, c. 885; 2004, c. 1000; 2005, c. 248; 2006, cc. 860, 901.)

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State **Defense Force** while such member is serving in the Virginia National Guard or the Virginia State **Defense Force** on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

(1995, cc. 112, 156, 597, §§ 2.1-133.5, 2.1-133.6; 1996, cc. 66, 174; 1998, c. 712; 2001, cc. 678, 844; 2003, cc. 37, 41, 1005; 2004, c. 30; 2005, cc. 907, 910; 2006, c. 824.)

§ 9.1-801. Public safety officer defined.

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a correctional officer employed at a juvenile correctional facility as the term is defined in § 66-25.3; a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or rescue squad that has been recognized by an ordinance or resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia State **Defense Force** while such a member is serving in the Virginia National Guard or the Virginia State **Defense Force** on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any police agent appointed under the provisions of § 56-353; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to § 29.1-200; any commissioned forest warden appointed

pursuant to § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power to arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; any investigator who is a full-time sworn member of the security division of the State Lottery Department; any full-time sworn member of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications, when fulfilling duties pursuant to § 46.2-217; any campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23; and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

(2002, c. 150.)

§ 44-1. Composition of militia.

The militia of the Commonwealth of Virginia shall consist of all able-bodied citizens of this Commonwealth and all other able-bodied persons resident in this Commonwealth who have declared their intention to become citizens of the United States, who are at least sixteen years of age and, except as hereinafter provided, not more than fifty-five years of age. The militia shall be divided into four classes, the National Guard, which includes the Army National Guard and the Air National Guard, the Virginia State **Defense Force**, the naval militia, and the unorganized militia.

(1930, p. 948; 1942, p. 642; Michie Code 1942, § 2673(1); 1944, p. 24; 1958, c. 393; 1970, c. 662; 1973, c. 401; 1976, c. 399; 1979, c. 647; 1984, c. 765; 1989, c. 414.)

§ 44-6. Maintenance of other troops.

In time of peace the Commonwealth shall maintain only such troops as may be authorized by the President of the United States; but nothing in this chapter shall be construed as limiting the rights of the Commonwealth in the use of the Virginia National Guard or Virginia State **Defense Force** within or without its borders in time of peace and nothing contained in this chapter shall prevent the organization and maintenance of State Police or constabulary.

(1930, p. 949; Michie Code 1942, § 2673(6); 1958, c. 393; 1984, c. 765.)

§ 44-19. Adjutant General to have charge of military property.

The Adjutant General shall have charge and care of all state military property and all United States military property issued to the Commonwealth of Virginia, and shall cause to be kept an accurate and careful account of all receipts and issues of the same. He shall require to be kept careful memoranda of all public military property on hand in the state arsenal or storehouses, and in the possession of the several organizations of the Virginia National Guard or issued to the Virginia State **Defense Force**, and shall guard such property against injury and loss to the extent of his ability. He shall require every accountable and responsible officer of the National Guard to account for every deficiency in public military property in his possession immediately after such deficiency is discovered. The Adjutant General shall have the care and control of the state military reservation near Virginia Beach, and of such other real estate as the Commonwealth may acquire for military purposes, and it shall be the duty of the Adjutant General to provide for the proper care of such property and buildings thereon. For the maintenance, upkeep and improvement of the military reservation or reservations, the Adjutant General may expend from the appropriation to the Department of Military Affairs such amounts as may be necessary.

(1930, pp. 950, 952; Michie Code 1942, §§ 2673(11), 2673(13); 1944, p. 24; R. P. 1948, § 44-19; 1958, c. 393; 1989, c. 414.)

§ 44-36. Enlistment contract and oath.

Enlisted persons shall not be recognized as members of the National Guard until they shall have signed an enlistment contract and taken and subscribed to the oath of enlistment prescribed by present or subsequently amended National Guard regulations; or such oath of enlistment as shall be prescribed by the Governor of Virginia for members of the Virginia State **Defense Force**.

(1930, p. 955; Michie Code 1942, § 2673(26); 1958, c. 393.)

§ 44-54.4. Organization; definitions.

The Virginia State **Defense Force** with a targeted membership of at least 1,200 shall be organized within and subject to the control of the Department of Military Affairs.

When called to state active duty, the mission of the Virginia State **Defense Force** shall be to (i) provide for an adequately trained organized reserve militia to assume control of Virginia National Guard facilities and to secure any federal and state property left in place in the event of the mobilization of the Virginia National Guard, (ii) assist in the mobilization of the Virginia National Guard, (iii) support the Virginia National Guard in providing family assistance to military dependents within the Commonwealth in the event of the mobilization of the Virginia National Guard, (iv) provide a military force to respond to the call of the Governor in those circumstances described in § 44-75.1.

Nothing in this article shall be construed as authorizing the Virginia State **Defense Force** or any part thereof to be called, ordered or in any manner drafted by federal authorities into the military service of the United States. However, no person by reason of his enlistment or appointment in the Virginia State **Defense Force** shall be exempted from military service under any law of the United States.

Members of the Virginia State **Defense Force** may serve in either of the following duty statuses:

1. "Training duty," which is the normal service and training performed by the Virginia State **Defense Force** in order to be prepared for state active duty, and which includes but is not limited to organization, administration, recruiting, maintenance of equipment and training.
2. "State active duty," which is the performance of actual military service for the Commonwealth when called by the Governor or his designee to active duty in service of the Commonwealth in accordance with Article 7 (§ 44-75.1 et seq.) of this chapter.

(1989, c. 414.)

§ 44-54.6. Members, appointment and enlistment.

The age limitations of § 44-1 to the contrary notwithstanding, the Virginia State **Defense Force** shall consist of:

1. Such volunteers who of their own volition agree to service in conformity with regulations prescribed by the Adjutant General who are (i) citizens of the Commonwealth, (ii) at least sixteen, provided that any volunteer under the age of eighteen shall have the written consent of at least one parent or guardian, and (iii) less than sixty-five years of age may join the Virginia State **Defense Force**.

2. Such persons of the unorganized militia who may be drafted to fill the force structure of the Virginia State **Defense Force** or who may be ordered out for active duty until released from such service.

The Adjutant General may, on a case-by-case basis, authorize volunteer members of the Virginia State **Defense Force** to be retained beyond age sixty-five to age seventy-five.

The officers of the Virginia State **Defense Force** shall be appointed by the Governor in conformity with regulations prescribed by the Adjutant General.

Enlisted members shall be enlisted and retained in conformity with regulations prescribed by the Adjutant General.

(1989, c. 414; 1996, c. 70.)

§ 44-54.8. Administration of oaths.

All commissioned officers of the Virginia State **Defense Force** and such other persons or officials as the Adjutant General prescribes are hereby authorized and empowered to administer oaths and affirmations in all matters pertaining to and concerning the Virginia State **Defense Force**, including but not limited to the enlistment of soldiers and the appointment of officers therein.

(1989, c. 414.)

§ 44-54.9. Uniform; rank in precedence; command.

The Virginia State **Defense Force** shall be uniformed and shall conform to standards of dress and appearance in accordance with regulations prescribed by the Adjutant General. The uniform and insignia of the State **Defense Force** shall include distinctive devices identifying it as a state **defense force** and distinguishing it from the National Guard or the armed forces of the United States. The wearing of permanent military decorations awarded in the service of the armed forces of the United States or in the national guards of the several states is authorized.

The grade structure of the Virginia State **Defense Force**, to the extent practicable, shall be the same as that prescribed for the Army National Guard.

(1989, c. 414.)

§ 44-54.10. Discipline.

All members of the Virginia State **Defense Force** on training duty or state active duty shall be subject to military discipline. Infractions of military discipline by members of the Virginia State **Defense Force** on state active duty shall be punishable under the provisions of § 44-40 and Article 4 (§ 44-42 et seq.) of this chapter.

(1989, c. 414.)

§ 44-54.11. Discharge; dismissal.

Upon expiration of the term of service for which appointed or enlisted, a member of the Virginia State **Defense Force** shall be entitled to a discharge. However, no member shall be discharged by reason of expiration of his term of service while on state active duty.

A member of the Virginia State **Defense Force** may be dismissed or discharged prior to the expiration of his term of service by sentence of a court-martial or for misconduct, inefficiency, unsatisfactory participation, personal hardship or for the convenience of the Commonwealth. Discharge proceedings shall be prescribed by the Adjutant General.

The Adjutant General may prescribe appropriate discharge certificates reflecting the character of the member's service.

(1989, c. 414.)

§ 44-54.12. Arms, equipment and facilities.

The Virginia State **Defense Force**, to the extent authorized by the Governor and funded by the General Assembly, shall be equipped as needed for training and for state active duty. The Adjutant General, by regulation or otherwise, may authorize the use of privately owned real and personal property if deemed in the best interest of the Commonwealth.

To the extent permitted by federal law and contracts with the federal government or localities and to the extent that space is available, the Adjutant General in his discretion may authorize the use of armories and other facilities of the National Guard, other state facilities under his control, and all or portions of privately owned facilities under contract for the storage and maintenance of arms, equipment and supplies of the Virginia State **Defense Force** and for the assembly, drill, training and instruction of its members.

Members of the Virginia State **Defense Force** shall not be armed with firearms during the performance of training duty or state active duty, except under circumstances and in instances authorized by the Governor.

(1989, c. 414.)

§ 44-75.2. Militia training duty.

Subject to the direction and orders of the Governor, the Adjutant General shall provide for the training and administration of the National Guard and the State **Defense Force** and shall require the members of the National Guard and the State **Defense Force** to attend such training when scheduled. Members of the National Guard may assist on an unpaid, volunteer basis in the training and administration of the State **Defense Force**. Whether training in a paid or unpaid status, members of the National Guard and State **Defense Force** shall at all times be subject to the orders of their respective commanders.

(1988, c. 352.)

§ 44-80. Order in which classes of militia called into service.

The National Guard, the Virginia State **Defense Force**, the naval militia and the unorganized militia or any part thereof may be ordered into service by the Governor in such order as he determines.

(1930, p. 963; Michie Code 1942, § 2673(66); 1964, c. 227; 1989, c. 414.)

§ 44-81. Length of service when called out.

The National Guard, the Virginia State **Defense Force**, the naval militia or the unorganized militia, when called into service by the Governor, shall serve for sixty days after their arrival at the place of rendezvous, unless sooner discharged. But the Governor shall, at all times, have power to retain them in service for such time as, in his judgment, may be necessary; however, except when the whole National Guard or the whole Virginia State **Defense Force** is not required, no individual shall be retained for a longer period than sixty days except in instances where an individual soldier or airman of the National Guard voluntarily consents to service beyond sixty days.

(1930, p. 963; Michie Code 1942, § 2673(67); 1958, c. 393; 1989, c. 414; 1993, c. 112.)

§ 44-88. Incorporation into the Virginia State **Defense Force.**

Whenever the Governor orders out the unorganized militia or any part thereof, it shall be incorporated into the Virginia State **Defense Force** until relieved from service.

(1944, p. 25; Michie Suppl. 1946, § 2673(73); 1984, c. 765.)

§ 44-93.2. Leaves of absence from nongovernmental employment.

A member of the Virginia National Guard, Virginia State **Defense Force** or naval militia called to state active duty pursuant to the provisions of § 44-75.1 or § 44-78.1 by the Governor shall have the right to take leave without pay from his nongovernmental employment. No member of the National Guard, Virginia State **Defense Force** or naval militia shall be forced to use or exhaust his vacation or other accrued leaves from his nongovernmental employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(2002, c. 354.)

§ 44-93.3. Reemployment rights.

Upon honorable release from state active duty, a member of the Virginia National Guard, Virginia State **Defense Force** or naval militia shall make written application to his previous employer for reemployment within five days of his release from duty or from hospitalization following release. When released from such duty, they shall be restored to positions held by them when ordered to duty. If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified, unless to do so would be unreasonable.

(2002, c. 354.)

§ 44-93.4. Discrimination against persons who serve in the Virginia National Guard, Virginia State **Defense Force, or naval militia; and acts of reprisal prohibited.**

A. A member of the Virginia National Guard, Virginia State **Defense Force** or naval militia who performs, has performed, applies to perform, or has an obligation to perform state active duty shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

B. A person shall be considered to have denied a member of the Virginia National Guard, Virginia State **Defense Force** or naval militia initial employment, reemployment, retention in employment,

promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation for service.

(2002, c. 354.)

§ 44-96. Military property exempt from levy and sale.

The uniforms, arms and equipment required by law or regulations, of every commissioned and warrant officer and every enlisted person of the Virginia National Guard, Virginia State **Defense Force** and naval militia shall be exempt from sale under any execution, distress or other process for debt and taxes.

(1930, p. 966; Michie Code 1942, § 2673(81); 1958, c. 393; 1984, c. 765.)

§ 44-97. Exemption from arrest.

No person belonging to the Virginia National Guard, Virginia State **Defense Force** or the naval militia shall be arrested on any process issued by or from any civil officer or court, except in cases of felony or breach of the peace, while going to, remaining at or returning from any place at which he may be required to attend for military duty; nor in any case whatsoever while actually engaged in the performance of his military duties, except with the consent of his commanding officer.

(1930, p. 966; Michie Code 1942, § 2673(82); 1984, c. 765.)

§ 44-98. Interference with employment of members of Virginia National Guard, Virginia State **Defense Force or naval militia.**

A person, who either by himself, or with another, deprives a member of the Virginia National Guard, Virginia State **Defense Force** or naval militia of his employment, or prevents by himself or another, such member being employed, or obstructs or annoys such member or his employer at his trade, business or employment, because such member of such organization is such member, dissuades any person from enlistment in the Virginia National Guard, Virginia State **Defense Force** or naval militia by threat or injury to him in his employment, trade or business, in case he shall so enlist, shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not exceeding \$500, or imprisonment in jail not more than 30 days, or shall suffer both fine and imprisonment.

(1930, p. 967; Michie Code 1942, § 2673(83); 1958, c. 393; 1984, c. 765.)

§ 44-99. Organizations may own property; suits.

Companies or other organizations of the Virginia National Guard, Virginia State **Defense Force** and naval militia shall have the right to own and keep real and personal property necessary for their use, which shall belong to and be under control of the active members of the unit; and the commanding officer of any unit shall have the right and power to maintain any suit, in his own name, to recover for the use of the unit any debts or effects belonging to the unit, or damages for the injury thereof; and no suit pending in his name shall be abated by his ceasing to be the commanding officer of the unit; but upon motion of the commander succeeding him, such commander shall be admitted to prosecute the suit in like manner and with like effect as if it had

been originally instituted by him. Armories owned by such units shall be exempt from all state, county and municipal taxation.

(1930, p. 967; Michie Code 1942, § 2673(84); 1958, c. 393; 1984, c. 765.)

§ 44-100. No action allowed on account of military duties; counsel for members sued or prosecuted.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any member of the Virginia National Guard, Virginia State **Defense Force** or naval militia be liable to civil action or suit or criminal prosecution for any act done while in the discharge of his military duty.

If any member of the Virginia National Guard, Virginia State **Defense Force** or naval militia is sued civilly or arrested, indicted or otherwise prosecuted for any act committed in the discharge of his official duty while on state duty the Adjutant General may employ special counsel approved by the Attorney General to defend such member. The compensation for special counsel employed pursuant to this section shall, subject to the approval by the Attorney General, be paid out of the funds appropriated for the administration of the Department of Military Affairs.

(1930, p. 967; Michie Code 1942, § 2673(85); 1972, c. 416; 1973, c. 401; 1984, c. 765.)

§ 44-102. Commission not to vacate civil office.

Any citizen of this Commonwealth may accept and hold a commission in the Virginia National Guard and receive pay therefrom or a commission in the Virginia State **Defense Force** or armed forces reserve of the United States, without thereby vacating any civil office or position or commission held by him; and the acceptance or holding of any such commission, and receiving pay therefrom shall not constitute such holding of an office of trust and profit under the government of this Commonwealth and of the United States as shall be incompatible with the holding of any civil office, legislative or judicial, or position or commission under the government of this Commonwealth.

(1930, p. 968; Michie Code 1942, § 2673(87); 1958, c. 393; 1984, c. 765.)

§ 44-104. Care required and liability of officers.

All commissioned officers of the Virginia National Guard, Virginia State **Defense Force** and naval militia shall exercise the strictest care and vigilance for the preservation of the uniforms, arms, supplies, equipment and military property furnished to their several commands under the provisions of this chapter. Any officer receiving public property for military use shall be responsible for the articles so received by him; and he shall not transfer such property, or any portion thereof, to another, either as a loan or permanently, without the authority of the Adjutant General, or his duly authorized representative.

(1930, p. 968; Michie Code 1942, § 2673(89); 1958, c. 393; 1984, c. 765.)

§ 44-115. Custom and usage of United States army, air force and navy; applicability of § 44-40 and Article 4 of this chapter.

All matters relating to the organization, discipline and government of the Virginia National Guard, not otherwise provided for by law or by regulations, shall be decided by the custom and usage of the United States army, air force or navy, as appropriate. In addition, all members of the Virginia State **Defense Force**, the naval militia, and the unorganized militia on state active duty shall be subject to military discipline. Infractions of military discipline shall be punishable under the provisions of § 44-40 and Article 4 (§ 44-42 et seq.) of this chapter.

(1930, p. 970; Michie Code 1942, § 2673(100); 1964, c. 227; 1984, c. 765; 1989, c. 414.)

§ 44-204. Leaves of absence for employees of Commonwealth or political subdivisions.

All officers and employees of the Commonwealth, or of any political subdivision of the Commonwealth who are members of the Virginia State **Defense Force** or National Defense Executive Reserve shall be entitled to leaves of absence from their respective duties without loss of pay, seniority, accrued leave or efficiency rating on all days during which they shall be engaged in training approved by the Governor or his designee, not to exceed fifteen workdays per federal fiscal year. When relieved from such duty, they shall be restored to positions held by them when ordered to duty.

(1938, p. 573; Michie Code 1942, § 2673(124); 1964, c. 227; 1986, c. 611.)

§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard, the Virginia Naval Militia and the Virginia State **Defense Force**, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation

payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard, the Virginia Naval Militia or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Management shall be based upon the earnings of such persons from their primary employers.

"Award" means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

"Change in condition" means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded, suspended, or terminated which would affect the right to, amount of, or duration of compensation.

"Client company" means any person that enters into an agreement for professional employer services with a professional employer organization.

"Coemployee" means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

"Commission" means the Virginia Workers' Compensation Commission as well as its former designation as the Virginia Industrial Commission.

"Employee" means:

1. a. Every person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision 2 of this definition.

b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or instruction outside of regular working hours and off the job, so long as the training or instruction is related to his employment and is authorized by his employer.

c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of their commander.

Income benefits for members of the National Guard or Naval Militia shall be terminated when they are able to return to their customary civilian employment or self-employment. If they are neither employed nor self-employed, those benefits shall terminate when they are able to return to their military duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian employment or self-employment remains unable to perform his military duties and thereby suffers loss of military pay which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit training assembly or day of paid training which he is unable to attend.

d. Members of the Virginia State **Defense Force**.

e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on duty or in training.

f. Except as provided in subdivision 2 of this definition, all officers and employees of the Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts; and (iii) secretaries and administrative assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and compensated as provided in the general appropriation act, who shall be deemed employees of the Commonwealth.

g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability company elected or appointed in accordance with the articles of organization or operating agreement of the limited liability company.

i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, clerks of circuit courts and their deputies, officers and employees, and electoral board members appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities, counties and towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable.

j. Members of the governing body of any county, city or town in the Commonwealth, whenever coverage under this title is extended to such members by resolution or ordinance duly adopted.

k. Volunteers, officers and employees of any commission or board of any authority created or controlled by a local governing body, or any local agency or public service corporation owned, operated or controlled by such local governing body, whenever coverage under this title is authorized by resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains,

auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a limited liability company having only one member, or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor, shareholder or member or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or sole shareholder, member or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly.

- r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.
- s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.
- t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

2. "Employee" shall not mean:

- a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.
- b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth who are elected by the people or by the governing bodies, and who act in purely administrative capacities and are to serve for a definite term of office.
- c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.
- d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.
- e. Casual employees.
- f. Domestic servants.
- g. Farm and horticultural laborers, unless the employer regularly has in service more than two full-time employees.
- h. Employees of any person, firm or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees. An executive officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of this subdivision.
- i. Employees of any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories

and any foreign nation or nations, and any person suffering injury or death while he is employed by such carrier in such commerce. This title shall not be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed, or the personal representative, kindred or relation, or dependent of such person, may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce. However, this title shall not be construed to lessen the liability of such common carriers or take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as a member of such squad whether or not the volunteer continues to receive compensation from his employer for time away from the job.

l. Except as otherwise provided in this title, noncompensated employees and noncompensated directors of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

"Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

"Filed" means hand delivered to the Commission's office in Richmond or any regional office maintained by the Commission; sent by telegraph, electronic mail or facsimile transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, telegraph, electronic mail or facsimile transmission shall be deemed completed only when the application actually reaches a Commission office.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the

foregoing causes. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or
2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and
2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

"Professional employer organization" means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

"Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(Code 1950, §§ 65-2 through 65-7.1, 65-24, 65-25; 1952, c. 551; 1954, c. 246; 1956, cc. 283, 479; 1956, Ex. Sess., c. 53; 1958, c. 187; 1960, c. 149; 1962, c. 530; 1964, c. 603; 1966, c. 200; 1968, c. 660, §§ 65.1-2, 65.1-3, 65.1-4, 65.1-5 through 65.1-8, 65.1-27, 65.1-28; 1970, c. 470; 1971, Ex. Sess., c. 7; 1972, cc. 464, 619; 1973, cc. 297, 542; 1975, c. 330, § 65.1-4.1; 1976, c. 187; 1977, c. 326; 1978, cc. 41, 841; 1979, c. 80, § 65.1-2.1; 1980, c. 421, § 65.1-4.2; 1983, c. 346; 1984, cc. 388, 694, 703, § 65.1-4.3; 1987, cc. 213, 308, § 65.1-4.4; 1988, c. 360; 1989, cc. 312, 319, 437, §§ 65.1-4.5, 65.1-4.6; 1990, c. 838, § 65.1-4.1:1; 1991, cc. 277, 354, 355; 1992, c. 12; 1993, c. 280; 1994, cc. 271, 286, 526; 1995, cc. 4, 168, 272, 288; 1996, cc. 250, 721; 1998, c. 52; 1999, c. 1006; 2000, cc. 301, 624, 718, 1018; 2002, c. 69; 2003, c. 999; 2004, cc. 888, 928; 2005, cc. 354, 368, 374, 472; 2006, c. 629.)

§ 65.2-103. Coverage of members of the Virginia National Guard, Virginia State Defense Force and naval militia during response to orders.

A claim for workers' compensation benefits shall be deemed to be in the course of employment with the Virginia National Guard, Virginia State **Defense Force**, or naval militia for any member thereof who, reacting to an order to report received while he is outside an assigned shift or work location, undertakes in direct obedience to a lawful military order travel by the most expeditious route to his designated place of state active duty pursuant to §§ 44-54.4, 44-75.1, and 44-78.1. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

(2005, c. 223.)